THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.s 24953/2005 and 26673/2006

Date: 5th October, 2007

Between :-

Smt. A. Nagalakshmamma ..Petitioner

And

The Joint Collector, Kurnool,

Kurnool District and 3 others ..

Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.s 24953/2005 and 26673/2006

COMMON ORDER:-

1. Heard the Counsel.

2. The Writ Petition W.P.No.24953/2005 is filed for a Writ of Mandamus or any other appropriate Writ, Order or Direction declaring the action of the 1st respondent herein in entertaining the statutory appeal in Rc.CS.No.3/581/05, dt.8-11-2005, preferred by the 4th respondent herein as arbitrary, illegal and without jurisdiction and consequently direct the respondents to continue the petitioner as FP Shop Dealer of Gajulapalli village, Mahanandi Mandal, Kurnool District and pass such other suitable orders.

3. The writ petitioner also filed another Writ Petition

W.P.No.26673/2006 praying for issuance of a Writ, Order, Direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent herein in passing the Order in Rc.A 1990/2006, dt.2-12-2006 as arbitrary, illegal and unconstitutional and consequently direct the respondents to continue the petitioner as F.P.Shop Dealer of Gajulapalli village, Mahanandi Mandal, Kurnool District and pass such other suitable orders.

4. It is stated that in the affidavit filed in support of the Writ Petition, W.P.No.24953/2005, that the 2nd respondent – R.D.O., Nandyal, Kurnool District suspended the authorization as Fair Price Shop Dealer on certain allegations by Order dt.6-8-2005 pending enquiry. It is further stated by the petitioner that she submitted her detailed explanation to the charges levelled against her. Further it is averred by the petitioner that the 2nd respondent after conducting enquiry and after being satisfied that the allegations made against her are frivolous in nature, took a lenient view and imposed fine of Rs.500/- and directed to continue her as Fair Price Shop Dealer by order dt.5-11-2005. It is further stated that on the date of passing the suspension order on 6-8-2005, the 2nd respondent directed the 3rd to make alternative arrangements for distribution of the essential commodities to the Cardholders and accordingly, the 3rd respondent appointed the 4th respondent as temporary dealer for distributing the commodities during the suspension of

petitioner's authorization. It is also averred by the petitioner that the 2nd respondent while revoking her suspension held that the temporary appointment issued in favour of the 4th respondent was cancelled. It is also further stated by the petitioner that the 4th respondent preferred an appeal before the 1st respondent under Clause 20(1) of the A.P.State Public Distribution System Control Order, 2001. It is also stated that the 1st respondent by Order dt.8-11-2005 directed stay of all further proceedings of the order passed by the 2nd respondent dt.5-11-2005 revoking her suspension order, and aggrieved by the order passed by the 1st respondent, the petitioner is invoking extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India. It is also further stated that the 4th respondent was appointed purely on temporary basis and no right had accrued to him over the post as his appointment was purely temporary in nature and also averred that any aggrieved person can prefer an appeal invoking Clause 20 (1) of the Order. The petitioner also further averred that against the order revoking her suspension, the 4th respondent being temporary dealer cannot be treated as an aggrieved person and he has no locus-standi to prefer the appeal and that the appeal preferred by the 4th respondent is not maintainable under law and consequently the impugned order passed by the 1st respondent is without jurisdiction. It is also further stated

that the 1st respondent passed impugned order pending disposal of the appeal. It is further stated that the suspension of the petitioner was revoked on 5-11-2005 and the petitioner had taken DD for supply of the commodities on 7-11-2005. It is also stated that the 1st respondent passed the stay order on 8-11-2005 and the petitioner was not permitted to lift the stocks for the month of November.

5. This Court on 23-11-2005 while issuing *rule nisi* granted interim suspension in W.P.M.P.No.30271/2005 and also interim direction in W.P.M.P.No.32072/2005.

6. In the counter affidavit filed, it is stated that the writ petitioner was suspended pending enquiry on certain allegations and for the irregularities committed by her, and after due enquiry, the suspension orders were revoked by imposing a fine of Rs.500/- and during the suspension period of permanent Fair Price Shop Dealer, alternative arrangements have been made by appointing Sri P.Venkata Narasimhulu as a temporary Fair Price Shop Dealer in order to distribute the Essential Commodities to the cardholders without break and that while revoking the suspension order of permanent Fair Price Shop Dealer, the temporary appointment issued to the 4th respondent herein was cancelled. It is also stated that aggrieved by the orders passed by the Revenue Divisional Officer in which temporary Fair Price Shop Dealer Sri P.Venkata Narasimhulu had preferred an appeal before the Joint Collector, Kurnool and the Joint Collector, Kurnool has passed stay orders on the revoking suspension of

permanent Fair Price Shop Dealer pending disposal of the appeal. It is also further stated that initially the Revenue Divisional Officer, Nandyal vide his proceedings No.E/1098/05, dt.6-8-2005 has suspended the authorization pending enquiry, duly appointing 4th respondent as Fair Price Shop Dealer on temporary basis under alternative arrangements and that later on, after issuing show cause notice to the petitioner and after examining the explanation offered by the petitioner, has revoked his orders dt.6-8-2005 duly reinstating by imposing a fine of Rs.500/- with a direction to the Mandal Revenue Officer, concerned to allot E.Cs., after collection of the fine vide his proceedings No.E/1098/05, dt.5-11-2005. It is further stated that at this stage, the 4th respondent had preferred an appeal before the Joint Collector against above orders dt.5-11-2005, wherein the Joint Collector vide his orders No.CS.3/591/05 dt,8-11-2005 pending final disposal of the appeal. It is further stated that at this juncture, aggrieved by the orders of the 1st respondent, the petitioner has approached the Hon'ble Court and sought the orders in W.P.M.P.No.32071/2005 in W.P.No.24953/2005 dt.23-11-2005 to the effect of interim suspension of the Joint Collector Orders passed in proceedings No.CS.3/581/05, dt.8-11-2005 with a direction to the Revenue Divisional Officer, Nandyal to permit the petitioner to continue as Fair Price Shop Dealer and accordingly, she has been permitted to lift the stocks and continuing as Fair Price Shop Dealer at present. It is

also further stated that as per the Orders of this Hon'ble Court dt.23-11-2005, the petitioner has been permitted to lift the E.Cs., and at present the petitioner is continuing as Fair Price Shop Dealer of Gajulapally (v) of Mahanandi (m). It is also stated that in fact, as per the Judgment in W.P.No.4422/1996 of this Hon'ble Court, the temporary dealer has no grievance if the original dealer reinstated and as such, the temporary dealer has no locus standi to question the orders passed by the competent authority in this matter.

7. It is not in controversy that a temporary dealer also has *locus standi* to question such proceedings. Reliance was placed on the decision of the Full Bench in W.A.No.1805/2005 & 270/2007 and W.P.No.24953/2005.

8. In Writ Petition No.26673/2006 while issuing *rule nisi* on 22-12-2006, in W.P.M.P.No.34271/2006 *interim suspension* had been granted.

9. It is stated that in the affidavit filed in support of the Writ Petition that *the 1st respondent suspended the authorization on 6-8-2005 pending enquiry on certain allegations. It is also stated that on the detailed explanation to the charges levelled against the petitioner, the 1st respondent conducted enquiry and after being satisfied that the allegations made against the petitioner are frivolous in nature, took a lenient view and imposed a fine of Rs.500/- and directed to continue the petitioner as Fair Price Shop Dealer by his order dt.5-11-2005. Further it is stated that on the date of passing of the suspension order i.e., on 6-8-2005, the first respondent directed the*

2nd respondent to make alternative arrangements for distribution of essential commodities to the cardholders and accordingly, the 2nd respondent appointed temporary dealer for distributing the essential commodities during the suspension of petitioner's authorization. The petitioner further stated that first respondent while revoking her suspension held that the temporary appointment issued in favour of temporary dealer was cancelled. Further it is stated that the temporary dealer preferred an appeal before the Joint Collector and the Joint Collector by order dt.8-11-2005 directed to stay of all further proceedings of the order passed by the 1st respondent dt.5-11-2005 revoking the suspension order and aggrieved by the order passed by the Joint Collector, the writ petitioner filed W.P.No.24953/2005 before this Court. It is also stated that this Court was pleased to pass orders of interim direction and interim suspension and admitted the Writ Petition and subsequently, the temporary dealer filed the Vacate Stay Petition, which was dismissed by this Court and stay was made absolute and posted for final hearing and this Court has referred the said Writ Petition to the Full Bench of this Court. While such was the position, the first respondent herein again suspended the authorization by order dt.2-12-2006, pending enquiry, which was received by the petitioner on 12-12-2006 and in the order it is stated that the petitioner has committed certain irregularities, which are trivial in nature and in the order it is stated that the Mandal Revenue Inspector-II has enquired

basing on the representations of some of the villagers of and had submitted a report to the 2nd respondent and in turn, the 2nd respondent recommended for necessary disciplinary action against the petitioner and that on the said recommendation, the impugned proceedings are initiated. It is also stated that the petitioner distributed the commodities till November, 2006 and obtained necessary DDs for the present month also for distribution of commodities. It is further stated that the action of the first respondent herein in suspending the authorization of the petitioner solely basing on the report submitted by the 2nd respondent herein is arbitrary, illegal, unconstitutional, against the principles of natural justice and without application of mind. It is also stated that the 1st respondent passed the order of suspension solely on the recommendation made by the 2nd respondent to take disciplinary action against the petitioner. It is also stated that the passing of order of suspension is subject to the satisfaction of appointing authority and he has to pass the order of suspension after being satisfied with the material placed before him and that the 1st respondent seems to have passed the order of suspension merely accepting the recommendation of the 2nd respondent and as such the impugned order was passed without application of mind and the same is liable to be set aside. It is further stated that that the allegations made in the suspension order do not make out any prima facie case to pass the order of suspension and that the appointing authority did

not even make any enquiry to ascertain whether the allegations made against the petitioner are factually correct or not. Further it is stated that there is absolutely no legally acceptable evidence much less any evidence before the appointing authority to pass the impugned order and that the impugned order was passed at the behest of the local politicians with a view to see that their own men are appointed to run the Fair Price Shop.

10. In the counter affidavit filed, it is stated that *it is a fact that the authorization held by the petitioner was suspended by the respondent No.1 pending enquiry for the irregularities committed by the petitioner in this office proceedings Rc.E.1098/2005, dt. 6-8-2005 and after due enquiry and perusal of the explanation of the petitioner, the suspension orders have been revoked by imposing a fine of Rs.500/- on 5-11-2005 by respondent No.1 and that on paying fine, the petitioner is continued as Fair Price Shop Dealer. Further it is stated that the same was questioned by temporary dealer and the Joint Collector, Kurnool, on 8-11-2005 stayed the orders of Revenue Divisional Officer, but however, the same was questioned by the writ petitioner in W.P.No.24953/2005 which was stayed by this Hon'ble Court. Further it is stated that the writ petitioner has again committed irregularities in distribution of essential commodities and on receipt of the complaints from the cardholders on 22-10-2006bt Mandal Revenue Officer, Mahanandi, he has conducted enquiry through the Mandal Revenue Inspector, Mahanandi and submitted report to the Revenue Divisional Officer,*

Nandyal for disciplinary action and basing on the report of the Mandal Revenue Officer, dt.18-11-2006, the authorization held by the petitioner has again been suspended by the 1st respondent pending enquiry in this office proceedings Rc.A.No.1990/2006, dt.2-12-2006, for the irregularities committed by the petitioner. In reply to para 5,it is stated that the authorization held by the petitioner was suspended only because of the irregularities committed by the petitioner since they are serious in nature. It is stated that the order of suspension is legal and according to Rules and Regulations under APS PDS Control Order, 2001 and the suspension orders were issued after being satisfied with the material produced by the Mandal Revenue Officer, Mahanandi, and on prima facie evidence that the petitioner is collecting higher prices and in supplying less quantity of essential commodities and therefore, the allegations made by the petitioner are untenable. Further it is stated that on having satisfied with the material placed by the Mandal Revenue Officer and the allegations made by the cardholders, were found true during the enquiry, the authorization held by the petitioner has been suspended and that it is not correct to say the orders of suspension passed by the Revenue Divisional Officer, Nandyal, are at the behest of local politicians as alleged by the petitioner and the same is denied. It is further stated that that the petitioner if aggrieved by the orders of suspension issued by the Revenue Divisional Officer, Nandyal, has to file statutory appeal before the Joint Collector, Kurnool and

the petitioner has not availed the alternative remedy but filed this Writ Petition on untenable grounds.

11. It is not in serious controversy that even a temporary dealer can prefer an appeal. It is stated that an appeal preferred by the temporary dealer is pending before the Joint Collector, Kurnool – 1st respondent in W.P.No.24953/2005. Hence, let the first respondent – Joint Collector, Kurnool, to dispose of the appeal in accordance with law within a period of four weeks from the date of receipt of this order. In the light of the subsequent events, the subsequent suspension, the same had been questioned in another W.P.No.26673/2006, and this Court granted interim suspension on 22-12-2006. In the light of the same, let the Revenue Divisional Officer, Nandyal, complete the enquiry within a period of four weeks from the date of receipt of this order, till then the interim order granted by this Court be operative.

12. The Writ Petitions are disposed of accordingly. No costs.

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Justice P.S.Narayana

Date : 5-10-2007

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